

STATE OF INDIANA)
) SS:
COUNTY OF OWEN)

IN THE OWEN CIRCUIT COURT

CAUSE NO. 60C02-1607-MI-___

IN THE MATTER OF
LOCAL RULES OF THE
OWEN CIRCUIT COURT

**Notice of Proposed New Local Rule on Evidence Retention and Finding
Good Cause to Deviate From Established Schedule
July 25, 2016**

Owen Circuit Court, pursuant to Trial Rule 81(B), gives notice of a proposed **new local court rule on Evidence Retention**, and finds good cause to deviate from the schedule for adopting local rules under Trial Rule 81(D).

Notice is given to the public by furnishing a copy to the Owen County Clerk, publishing on the Indiana Judicial Website, and by furnishing a copy to the members of the local bar.

Comments may be made until **August 31, 2016** to:

The Honorable Kelsey Hanlon, Judge, Owen Circuit Court II, P.O. Box 613, Spencer, IN 47460, or by email at kelsey.hanlon@owencounty.in.gov.

The new local court rule will be effective on **September 1, 2016**.

DATED this 25th day of July, 2016.

_____/S/_____
**Kelsey Hanlon, Judge
Owen Circuit Court**

A. Preamble

In all cases, the court shall proceed pursuant to these Rules unless the court directs a longer retention period after motion by any party or on its own motion.

B. Retention Periods for Evidence introduced in Civil Proceedings

- 1. Civil Cases, Including Adoption, Paternity, and Juvenile Proceedings.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, four (4) months after the case is decided unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for two (2) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later.
- 2.** The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.

C. Retention Periods for Evidence Introduced in Criminal Misdemeanor, Level 6 through Level 3 Felonies and Attempts.

- 1. Misdemeanor, Level 6 through Level 3 Felonies and Attempts.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence except as otherwise ordered by the court, three (3) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for three (3) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.
- 2.** The Court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.
- 3.** This section will be also be applied to Class C and Class D Felonies and Attempts under the previous felony level distinctions.

D. Retention Periods for Evidence Introduced in Criminal Level 1 and 2 Felonies and Murder and Attempts

- 1. Level 1 and 2 Felonies and Murder and Attempts.** All models, diagrams, documents, or material admitted in evidence or pertaining to the case placed in the custody of the court reporter as exhibits shall be taken away by the parties offering them in evidence, except as otherwise ordered by the court, twenty (20) years after the case is dismissed, the defendant found not guilty, or the defendant is sentenced, unless an appeal is taken. If an appeal is taken, all such exhibits shall be retained by the court reporter for twenty (20) years from termination of the appeal, retrial, or subsequent appeal and termination, whichever is later, unless an action challenging the conviction or sentence, or post-conviction action, is pending.
2. The court reporter shall retain the mechanical or electronic records or tapes, shorthand or stenographic notes as provided in Administrative Rule 7.
3. Courts should be encouraged to photograph as much evidence as possible and courts and parties reminded of the requirements of Appellate Rule 29(B).
4. This section will also be applied to Class A and Class B Felonies and attempts under the former felony class distinctions.

E. Non-documentary and Oversized Exhibits

- 1. Non-documentary and Oversized Exhibits.** Non-documentary and oversized exhibits shall not be sent to the Appellate level Court, but shall remain in the custody of the trial court or Administrative Agency during the appeal. Such exhibits shall be briefly identified in the Transcript where they were admitted into evidence. Photographs of any exhibit may be included in the volume of documentary exhibits.
2. Under no circumstances should drugs, currency, or other dangerous or valuable items be included in appellate records.

F. Notification and Disposition

1. In all cases, the court shall provide actual notice, by mail, to all attorneys of record and to parties only if unrepresented by counsel, that the evidence will be destroyed by a date certain if not retrieved before that date. Counsel and parties have the duty to keep the court informed of their current addresses and notice to the last current address shall be sufficient.

Court reporters should maintain a log of retained evidence and scheduled disposition date and evidence should be held in a secure area. At the time of removal, a detailed receipt shall be given to the court reporter by the party receiving and removing the evidence, the receipt will be made part of the court file.

2. In all cases, evidence which is not retaken after notice should be disposed of by the sheriff on the court's order. The sheriff should be ordered to destroy evidence if its possession is illegal or if it has negligible value. Evidence of some value should be auctioned by the sheriff with proceeds going to the county general fund. These Rules and their retention periods will take precedence over inconsistent language in statutes, *See* I.C. 35-33-5-5(c)(2).

G. Biologically Contaminated Evidence

1. A party who offers biologically contaminated evidence must file a pretrial notice with the trial court and serve all the parties so that the court can consider the issue and rule appropriately before trial. A party can show contaminated evidence or pass photographs of it to jurors, but no such evidence, however, contained, shall be handled or passed to jurors or sent to the Jury Room.